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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of the Commission's Rules to)
Establish Competitive Service Safeguards for)
Local Exchange Carrier Provision of)
Commercial Mobile Radio Services)

WT Docket No. 96-162

)
Implementation of Section 601(d) of the)
Telecommunications Act of 1996, and)
Sections 222 and 251(c)(5) of the)
Communications Act of 1934)

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Amendment of the Commission's Rules to)
Establish New Personal Communications)
Services)

GEN Docket No. 90-314

)
Requests of Bell Atlantic-NYNEX Mobile,)
Inc., and U S WEST, Inc., for Waiver of)
Section 22.903 of the Commission's Rules)

COMMENTS
of the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket, released on August 13, 1996. NTCA supports the Commission's decision to exempt non-Tier 1 independent and rural local exchange carriers from any streamlined 47 C.F.R. § 22.903 requirements or the proposed uniform nonstructural safeguards detailed in the NPRM.

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone

companies” as defined in the Telecommunications Act of 1996 (“Act”).¹ All NTCA members are also non-Tier 1 LECs, as defined by the Federal Communications Commission (“FCC”).² The average total number of subscribers served by the companies is very small: 5,438 for the companies organized as cooperatives and 3,446 for the commercial companies. Approximately half of NTCA’s members are organized as cooperatives. Many of NTCA’s members currently provide wireless services to their customers as cellular licensees. Several NTCA members successfully bid for personal communications services (“PCS”) at the recent C-block auctions, others are participating in the on-going auction of blocks D, E and F, and several more are interested in partitioning existing licenses or participating in future spectrum auctions. These members are interested in providing PCS and other commercial mobile radio services (“CMRS”) to customers in their local service areas. NTCA’s members are not currently required to establish separate affiliates in order to provide CMRS in their service areas. Likewise, they are not subject to special nonstructural competitive safeguards.

¹ Telecommunications Act of 1996, Pub. L. No. 104-1-4, 110 Stat. 56 to be codified at 47 U.S.C. §§ 151 *et. seq.*

² The term “Tier 1” LEC is used by the FCC as a short-hand reference to those carriers with over \$100 million in revenues from regulated telecommunications operations that are subject to the cost accounting manual filing requirements under Section 64.903 of the Commission’s rules.

DISCUSSION

I. THE COMMISSION PROPERLY RECOGNIZES THAT THERE IS NO BASIS FOR REQUIRING NON-TIER 1 AND RURAL LECs TO ESTABLISH SEPARATE AFFILIATES IN ORDER TO PROVIDE CMRS TO THEIR CUSTOMERS.

NTCA supports the Commission's decision not to impose any structural separations and nondiscrimination requirements on non-Tier 1 and rural LECs. In its NPRM, the Commission seeks comment on the possible elimination or streamlining of Section 22.903 of its rules. Section 22.903 requires Bell operating companies ("BOCs") to establish structurally and operationally separate affiliates prior to providing CMRS in-region.³ The Commission also seeks comment on its decision not to impose these requirements, in any form, to non-Tier 1 and rural LECs.⁴ NTCA agrees with the Commission's conclusion that there is no basis for imposing any of Section 22.903's requirements, even streamlined, on non-Tier 1 or rural LECs.

The Commission correctly recognizes that the cost and potential disruption of requiring non-Tier 1 and rural LECs to establish new separate affiliates for the provision of cellular service under a streamlined Section 22.903 would be significant, both in terms of the direct costs of incorporation and lost efficiencies of joint operations, facilities, and staff.⁵ The average NTCA member has 25 employees and generates less than \$4 million in annual operating revenues. Further, the average NTCA member serves only 4,442 subscribers. There is no need for the

³ NPRM, ¶ 42.

⁴ NPRM, ¶ 92.

⁵ *Id.*

Commission to require these companies to operate a separate wireless affiliate to serve so few subscribers. For these companies, the cost associated with structural separations or mandatory separate affiliate requirements are often out of proportion to the speculative benefits of structural separations. In these cases where local telephone companies choose to use subsidiaries, they nevertheless need to be free to determine the arrangements that best fit their local condition.

Small companies and their subscribers, would also lose benefits in the form of name recognition and goodwill by operating their cellular or PCS business through a separate subsidiary. NTCA believes that the decision to incur the costs of establishing a cellular affiliate is a business decision, best left to the business judgment of the companies.

The Commission and Congress have previously recognized the importance of promoting rural LEC provision of spectrum-based services to ensure that new and innovative technologies are readily accessible to rural Americans.⁶ Rural telephone companies are best situated to rapidly and efficiently satisfy the wireless technology needs of their customers. The proposed structural separations requirements could deter rural telephone companies from participating in the wireless market, denying rural Americans access to innovative wireless technologies.

NTCA supports the Commission's conclusion that the costs of complying with a streamlined Section 22.903 outweigh the benefits of imposing a limited separate affiliate requirement on non-Tier 1 and rural LECs. The Commission has correctly recognized that application of such requirements to these LECs would not promote the rapid and efficient deployment of CMRS to rural customers and disserves the public interest.

⁶ See, *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 5532 (1994) (permitting geographic partitioning of PCS service areas to rural telephone companies as an effort to promote PCS to otherwise under-served populations).

II. THE COMMISSION PROPERLY RECOGNIZES THAT THERE IS NO BASIS FOR IMPOSING UNIFORM NONSTRUCTURAL COMPETITIVE SAFEGUARDS ON NON-TIER 1 AND RURAL LECS.

The Commission also properly recognizes that the uniform set of nonstructural competitive safeguards, proposed in the NPRM, would be unduly burdensome on small telephone companies who provide or seek to provide wireless services to their customers.⁷ It also recognizes that such requirements would discourage small telephone company entry into cellular and PCS markets.⁸ NTCA applauds the Commission's decision not to impose the proposed competitive safeguards to non-Tier 1 and rural LECs. As the Commission noted, the entry of small telephone companies into the cellular and PCS markets does not pose a significant threat of anticompetitive conduct towards potential wireless competitors.⁹

The Commission seeks comment on what changes, if any, should be made to their accounting rules to ensure that non-Tier 1 LECs will not cross-subsidize PCS activities from their regulated telephone ratebase. NTCA believes that there are sufficient safeguards already in the Commission's rules to avert cross-subsidization. Non-Tier 1 LECs file tariffs with the Commission and are subject to Title II review as well as complaint procedures. The companies that participate in the NECA pools as well as those that file their own tariffs are highly unlikely to have the leveraging ability to subsidize their wireless rates from their telephone ratebase.

⁷ NPRM, ¶ 115.

⁸ *Id.*

⁹ *Id.*


Furthermore, there is no record or indication that any non-Tier 1 LEC, already providing cellular or other CMRS services, has cross-subsidized in any manner.

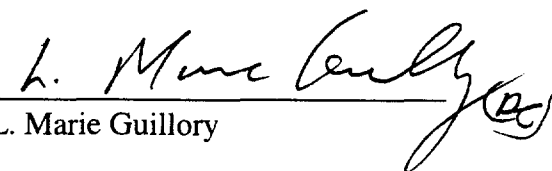
III. CONCLUSION

NTCA supports the Commission's conclusion that non-Tier 1 LECs should not be subject to a streamlined Section 22.903, imposing a limited separate affiliate requirement. Further, NTCA supports the Commission's decision not to impose the proposed uniform set of competitive safeguards on these companies. The Commission has correctly recognized that application of such requirements to these companies would unduly burden them and disserves the public interest by dissuading the rapid and efficient deployment of wireless services to rural Americans.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

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By 
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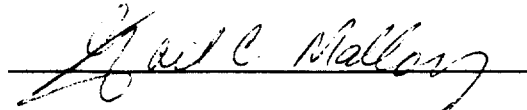
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October 3, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 96-162, GN Docket No. 90-314 was served on this 3rd day of October 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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